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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 380

RONALD L. TODD, et al.,

Petitioners,

vs.

JOINT APPRENTICESHIP COMMITTEE, ETC., and BETHLEHEM STEEL COMPANY, and LOCAL UNION NO. 1, ETC., ET AL.,

Respondents.

BRIEF FOR RESPONDENTS, JOINT APPRENTICESHIP COMMITTEE OF THE STEEL WORKERS OF CHICAGO AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL UNION NO. 1, AND ITS NAMED OFFICERS AND OFFICIALS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Respondents pray for the denial of the Petition for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above-entitled case on May 26, 1964.

QUESTION PRESENTED FOR REVIEW.

Whether the issue raised by the complaint, wherein the plaintiffs sought a preliminary injunction to assist them in obtaining employment on a Federal Office Building under construction in Chicago, Illinois, has become moot because the construction has been completed.

STATEMENT OF THE CASE.

Petitioners' Statement of the Case requires clarification on a number of very important points.

Petitioners state that the Union informed Tesauro, Bethlehem and Dost, that it would not accept Negro structural ironworkers or apprentices for work on the subject construction project. This is completely inaccurate, as more fully appears from petitioners' own Exhibit No. 23. This memorandum of a meeting held on July 10, 1963 states that the Union had indicated that qualified Negro workers would be admitted. There was no testimony or other evidence received at the hearing in connection with the application for temporary injunction which would permit an inference that they would not accept Negroes.

Plaintiffs' Statement of the Case, at page 7, implies that there was a controverted issue of fact as to whether the Joint Committee actually had approximately 150 applicants in its files on July 15, 1963, when it wrote to Bethlehem that it would supply any required apprentices from the Joint Committee's regular waiting list. It further seeks to cast doubt on this point by stating that many of the "alleged" applicants were found by the Committee to be unavailable. The record contains no evidence on this point other than the testimony of the Co-Ordinator of the Joint Apprenticeship Committee, Mr. Flood. He testified (Transcript Page 654) that at the time the plain-

tiffs applied for apprenticeship training in June of 1963, the Committee had in its file approximately 150 applicants. He stated that subsequent to Plaintiff's applications, around August 20, 1963, the Committee called nine new applicants from the waiting list and indentured them for training. In his testimony, he said that the Committee called approximately 60 of the applicants, whose names were on file prior to plaintiffs', and was unable to actually reach some of them. Others stated that they were no longer interested in an ironwork apprenticeship, while still others stated that they were presently employed and would like to have their turn deferred until the future. There was no other evidence offered at the hearing which even touched on this question, and no inference can possibly be drawn that the Joint Committee did *not* have approximately 150 prior applicants in its files at the time plaintiffs applied.

Plaintiffs' Statement of the Case further misstates the contents of the letter of September 23, 1963, from the President's Committee on Equal Employment Opportunity addressed to Mr. Dominic Tesauro, which was admitted into evidence as plaintiffs' Exhibit No. 27. Nowhere in this exhibit does the writer indicate that the President's Committee had conducted an investigation which, "confirmed the obvious violations of the Executive Order". This letter really said that Negroes were effectively denied opportunities in ironwork in Chicago because "of their lack of participation in this trade in the past", and further, because of the long apprenticeship waiting list. In effect, the letter confirmed the fact that there were long waiting lists, and, it implied that in order to give Negroes any present opportunities they would have to be "preferred". It is quite clear that the Executive Order did not contemplate giving preferences, but was designed to insure the very opposite, namely, equal treatment for all. The writer

of that letter therefore concluded that under the circumstances action against Bethlehem would not be appropriate at that time.

On Page 9 of their petition, plaintiffs point out that Bethlehem notified the District Court on or about October 25, 1963, that the steel work had been completed on the Federal Court House Building. It is important to note that the Court was advised at the first hearing on September 27, 1963 (see Transcript Page 24) that the work would be finished in less than a month and that the Court heard testimony on Thursday, October 10, 1963, from Mr. Charles W. Pitchford, Manager of erection for the Western District of Bethlehem Steel Company (see Transcript, Page 747), which showed that termination of the steel work on the building was imminent. Mr. Pitchford stated that three of the four derricks used in construction had been removed as of that date, that the fourth one would start to come down either the latter part of that week, or the first of the following week, that only 46 ironworkers and 2 apprentices remained on the job, that no new workers for this trade were being hired, and that ironworkers were being laid off as the job approached the end. This was six days before the oral opinion of October 16, 1963, and the notification of final completion given on October 25, 1963 was 14 days before the *nunc pro tunc* order of November 8, 1963.

ARGUMENT.

THE DECISION OF THE COURT OF APPEALS WAS CORRECT, AND IS NOT IN CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT.

The most important document in the record of this case is the complaint. It is made a part of this brief and attached hereto as an Appendix. The importance of this document was clearly grasped by the Court of Appeals in the paragraph of its opinion quoted on Page 10 of the Petition under the section labeled "Reasons for Granting the Writ and Argument Amplifying Same".

The key words in this paragraph are "*within the scope of the complaint* (emphasis added)". The Court of Appeals laid great stress on this point during the course of the oral argument. A careful reading of the complaint makes it quite clear what this case is all about. Reduced to its simplest terms, the case is an attempt by the plaintiffs to obtain employment as structural ironworkers on the Federal Office Building which was being built in Chicago, Illinois during 1963 and 1964. They asserted their rights by allegations that the contract for the construction of that building required the contractor and subcontractors on that project not to discriminate against any employee or applicant for employment because of his race, religion or nationality; that they had been discriminated against because of their race, and that the Courts should apply certain sanctions provided in Presidential Executive Order No. 10925 of March 8, 1961 (see Appendix F, page 49a of the Petition herein) against the offending contractor and subcontractor until they ceased discriminating against the plaintiffs and gave them work on the project.

The gist of the complaint is employment on the Federal Court House Building in Chicago, Illinois. All of the allegations are structured to that end. Nowhere is there a general plea for admission into the apprenticeship training program as such. The alternatives on page 7 of plaintiffs' Statement of the Case are not the alternatives pleaded in the complaint. The complaint prays that defendants be enjoined from proceeding with the performance of Contract No. GS-5PC-1178 until plaintiffs are employed as ironworkers, *or* that the Court restrain the defendants from making or receiving any payments on account of the contract until the plaintiffs are so employed. Nowhere in the prayer for relief is mention made of admission into the iron workers apprenticeship program.

If plaintiffs prevail, both on this appeal and on an ultimate appeal on the merits, the case will then go back to the trial court for a hearing on a permanent injunction. The issue at such a hearing will presumably be, as pointed out by the Court of Appeals in its opinion (see page 36a, Appendix B to the Petition herein), discrimination against the plaintiffs as it might relate to other construction contracts. This issue is not raised by the complaint and, therefore, within the context of this action, it is an abstract question which the courts will not decide. The matter before this Court is nothing more than a temporary injunction which is applicable only to the Federal Office Building in Chicago, Illinois. As such, it is a very limited question and, therefore, lacking in general importance.

A reading of *Johnson-Kennedy Radio Corp.* v. *Chicago Bears Football Club, Inc.*, 97 F. 2d 223 (1938), will show its similarity to this case. The Court of Appeals correctly relied on that precedent. There it was, the radio broadcast of a football game, and in this case it was the ironwork in connection with the construction of a Federal Office Build-

ing. In both cases the particular physical events to which the injunction was directed had passed into history at the time the matter was before the reviewing court.

In the *Johnson* case the court could have enjoined the playing of the game between the Chicago Bears and Chicago Cardinals until there had been a final determination of who had the right to broadcast the game. Absent such an injunction, the teams had a right to proceed with the playing of the game, and this they did. Here, the court could have stopped the iron-work on the Federal Office Building directly, or indirectly, by stopping the payments to the contractor and subcontractor. Absent such an injunction, the subcontractor, Bethlehem Steel Company, had a right to continue with the work, and this it did.

In the *Johnson* case, the issue involved the right to broadcast the football game which was to be played on November 29, 1936. In this case the issue involves the right to be hired as ironworkers on the Federal Office Building. In *Johnson,* a resolution of the issue was found to be meaningless (and therefore moot) because the game had long since been played and there was nothing to broadcast no matter who prevailed on the appeal. Here the ironwork has long since been completed on the Federal Office Building, and there is no work the plaintiffs can do, even if they eventually prevail on the appeal.

The fact that the plaintiffs in this case are Negroes, and that it indirectly involves alleged discrimination in connection with an apprenticeship program, union membership, and employment practices, may tend to obscure the fact that the case is nothing more than an attempt to obtain employment on the Federal Office Building. Had this complaint been a direct attack on membership policies of the defendant Union, the apprenticeship selection policies of the defendant, Joint Apprenticeship Committee, and the connection of the Federal and State Governments to those

policies, this would have been an entirely different lawsuit. It must be remembered that the present state of the case results from a hearing on a motion for a preliminary injunction. As the Court of Appeals pointed out in its opinion (see page 34a, Appendix B of the Petition) the evidence considered at the hearing related primarily to contract No. GS-5PC-1178 and the failure of Bethlehem to employ the plaintiffs on that construction project.

Plaintiffs argue that the Court of Appeals erroneously found that it had before it "merely a temporary injunction applicable only to the specific contract project to which it is addressed." It is submitted that this statement by the Court of Appeals is probably the most accurate characterization which could be made of the case. Plaintiffs have made every effort to escape the dilemma they find themselves in as a result of the completion of the Federal Office Building. Both before the Court of Appeals in their briefs, and oral arguments, and in the Petition filed herein, they seek to broaden the issue beyond the particular project.

The speciousness of their argument is clearly pointed up by the fact that the third named plaintiff, Michael Cochran, was denied relief by the trial court even though all of the evidence of the alleged discrimination presumably applied equally to him as to the other two named plaintiffs, Ronald Todd and James Hill. Even more significant is the fact that this relief was apparently denied because the evidence showed that the subcontractor, Bethlehem Steel Company, only offered to hire two of the three plaintiffs (see plaintiffs' Exhibit No. 24). The District Court apparently selected the plaintiffs, Todd and Hill, rather than Cochran on the basis of the testimony of the witness Del-Giorno (see Transcript Pages 722-735). The testimony of this witness produced by the subcontractor, Bethlehem Steel Company, tended to cast doubts on the veracity of the plaintiff, Michael Cochran, and apparently the District

Court felt that this constituted a declaration by Bethlehem that they would not consider him a satisfactory employee. Granting, for the sake of argument, that this was Bethlehem's conclusion, and that they properly rejected Cochran for other than racial reasons, this did not constitute a reason for denying to Cochran the so-called broader relief which plaintiffs now argue is involved in this suit. If this conclusion is correct, then it must follow that counsel's failure to take an appeal on behalf of the plaintiff Cochran (he did not take an appeal to the Court of Appeals; see Court's opinion p. 36a Appendix B of the Petition) constitutes a tacit admission that the action really pertained only to the Federal Office Building, and nothing more.

Petitioners rely on the case of *Local 47, etc.* v. *N. L. R. B.*, 341 U. S. 707 (1951). This case involved the issuance of a cease and desist order by the National Labor Relations Board in connection with alleged unfair labor practices by the Union. The original complaint filed with the Board was based on a strike which the Union called against work that the complainant was doing on a home in Chattanooga, Tennessee. The Union ordered its union carpenters not to work so long as the complainant's non-union men were working on the job. The cease and desist order was directed at the Union's entire relationship to the complainant's business. It was a general protective order given to the complainant so that he would no longer be harassed by the same unfair labor practice. This is in sharp distinction to the present case, where the complaint was aimed solely at obtaining employment for the plaintiffs on the Federal Office Building project. The underlying dispute was over plaintiffs' efforts to obtain employment on the Federal Office Building, the defendants alleged discrimination against them, and refusal to give them such employment.

Petitioners refer to the case of *Federal Trade Commission* v. *Goodyear Rubber Co.*, 304 U. S. 257 (1938), which is an example of the principle that a continuing order, such as the one which was entered by the Federal Trade Commission in that case, does not become moot just because the particular conduct which prompted it has ceased.

The order in the *Goodyear* case was aimed at Goodyear's unlawful price discrimination in favor of Sears & Roebuck. In order to be effective such an order had to be a continuing one which would subject Goodyear to the appropriate sanctions in the event that it violated the order at some future date. This would be true notwithstanding the fact that at the time of the review they had ceased the illegal price discrimination. This principle certainly has no application to this case, since the complaint involved the efforts of the plaintiffs to obtain employment on the Federal Office Building, rather than any continuing course of conduct. The rule in the *Goodyear* case would be applicable here only if there would be additional structural ironwork on the Federal Office Building in the future. In such event, the court's order here would be meaningful, and could be enforced at such time as there was additional work. It is patent that such is not the nature of this construction work.

Petitioners argue that the case of *Ramsburg* v. *American Investment Co. of Illinois*, 231 F. 2d 333 (1956) is in conflict with the Court of Appeals decision in the instant case. They neglect, however, to call to this Court's attention the case of *Fink* v. *Continental Foundry & Machine Company*, 240 F. 2d 369 (1957). This was a later case of the Seventh Circuit Court in which it distinguished the *Ramsburg* case, and it is submitted that the *Fink* case principle is the one which is applicable to this case. The Court stated at page 374 of the *Fink* opinion the general rule:

"The general law, as well as the law in this Cir-

> cuit, has long been established that if pending an appeal an event occurs which renders it impossible for the Appellate Court to grant any relief or renders a decision unnecessary the appeal will be dismissed."

This respondent also respectfully directs the court's attention to the case of *Mills* v. *Green,* 159 U. S. 651, 40 L. Ed. 293, 16 Sup. Ct. 132 (1895). This case was cited with approval in both the *Johnson-Kennedy* case, *supra,* and the *Fink* case, *supra.* The *Mills* case was an action for an injunction against the supervisor of registration of a county in the State of South Carolina. The suit sought to restrain the supervisor from performing certain acts and for other relief. The District Court granted an injunction but the United States Circuit Court of Appeals for the Fourth Circuit reversed the order, dissolved the injunction, and remanded the case with directions to dismiss. An appeal was taken to the United States Supreme Court, by the plaintiff, and thereafter the defendant moved to dismiss the appeal on the ground that the case was moot. In granting the motion to dismiss, this Court said at page 295:

> "In the case at bar, the whole object of the bill was to secure a right to vote at the election to be held, as the bill alleged, on the third Tuesday of August, 1895, of delegates to the constitutional convention of South Carolina. Before this appeal was taken by the plaintiff from the decree of the circuit court of appeals dismissing his bill, that date had passed; and, before the entry of the appeal in this court, the convention had assembled, pursuant to the statute of South Carolina of 1894, by which the convention had been called. 21 S. C. Stat. 802, 803. * * * It is obvious, therefore, that, even if the bill could properly be held to present a case within the jurisdiction of the circuit court, no relief within the scope of the bill could now be granted."

This language in the *Mills* case is almost the same as that used by the Court of Appeals in its opinion in this case,

". . . no relief within the scope of the bill could now be granted."

It is significant that in paragraph 5 of the complaint (see page 15 of Appendix A) the plaintiffs actually define the Class, allegedly included in the class action, in terms of contract No. GS-5PC-1178. That paragraph says "The provisions of the contract quoted hereinbefore were entered into for the benefit of plaintiffs and persons similarly situated." Yet, they now argue that the action really has nothing specifically to do with that contract, nor the Federal Office Building, but is actually an attack on the entire Union Apprentice Program insofar as it may discriminate against Negroes, generally.

Mr. Justice Holmes dealt with a question of mootness in the case of *Barker Painting Company* v. *Local No. 734, Brotherhood of Painters, Decorators, and Paperhangers of America, et al.*, 281 U. S. 462, 74 L. Ed. 967 (1930). In that case the plaintiff filed a bill in equity to enjoin the Union from striking a painting job which the plaintiff had taken in Somerville, New Jersey. A preliminary injunction was issued restraining the workmen from observing the union rules and from not returning to work. All the men obeyed the injunction, except one who completed the job. On appeal, the Court of Appeals refused to go into the case on the merits. In affirming that decree, Justice Holmes said at page 463 as follows:

> "Both sides desired that the court should go farther afield. But a court does all that its duty compels when it confines itself to the controversy before it. It cannot be required to go into general propositions or prophetic statements of how it is likely to act upon other possible or even probable issues that have not yet arisen. See *Willing* v. *Chicago Auditorium Asso.*, 277 U. S. 274, 72 L. ed. 880, 48 Sup. Ct. Rep. 507. The controversy here was between the plaintiff and the painters in Somerville who prevented its finishing its

> job. If the case had needed to be considered on its merits, it would have been likely to involve a discussion more or less far-reaching of the powers of the union, but the plaintiff could not impose a duty to go into that discussion when, before the time for it, the resistance had been withdrawn and the job had been done."

See also *United States* v. *Hamburg-Amerikanische Packetfahrt-Actien Gesellschaft, et al.*, 239 U. S. 467, 60 L. ed. 387, 36 Sup. Ct. 212 (1916) and *United States* v. *Alaska Steamship Company*, 253 U. S. 113, 64 L. ed. 808, 40 Sup. Ct. 448 (1920).

Counsel for plaintiffs, in his original statement to the District Court at the hearing held September 27, 1963 (see Transcript Page 10) probably best summed up the nature of the case when he said as follows:

> "Now, we complain in our complaint that though the plaintiffs are qualified and they demonstrated their qualifications and despite the plain provision of the contract that the contractor, subcontractor and none of the defendants have provided for these plaintiffs the benefits which this contract contemplates will be available to the plaintiffs and to the class of persons that represents. (sic)
>
> "So we are here as third party beneficiaries to a contract, asking the Court to furnish its aid in enforcing a contract on behalf of persons who are beneficiaries as the terms of the contract demonstrate to secure rights provided for in the contract which by their own efforts they have not so far have been able to secure or, *to put it in another way, this is a simple case in which the plaintiffs seek to enforce the contract as to which though they are not parties they are beneficiaries, and being beneficiaries, we assert their right to enforce that contract to secure the benefits intended for them.*" (Emphasis added.)

The contract to which counsel referred was the one for the construction of the Federal Office Building. It does not

pertain to any other construction project. Thus, by plaintiffs' own admission the case involves only the limited question of their rights to work on that building. The work having been completed, under the principles herein discussed, the cause is moot.

CONCLUSION.

Respondent Joint Apprenticeship Committee and its named officers and officials say that the decision of the Court of Appeals in this case is in accord with both the prior decisions of that Court, and also those of this Court. In arriving at its decision, the Court of Appeals properly applied the controlling principles of law. For those reasons, and those set forth above, these respondents urge that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

.....

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.....

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APPENDIX.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois,
Eastern Division.

Ronald L. Todd and Michael Cochran by his parents and next friends, Ulysses Cochran and Patricia Cochran, and James Hill,

Plaintiffs,

vs.

Joint Apprenticeship Committee of the Steel Workers of Chicago and International Association of Bridge, Structural and Ornamental Iron Workers Local Union No. 1, Sidney I. Cole, Chairman, Frank D. Reiland, Treasurer, A. Walter Becker, Thomas Cannon, James Eads, Joseph Frankovic, Stanford Jacobs, and Edmund D. Flood, Apprentice Co-Ordinator, Iron Workers Bridge and Structural Union, Local No. 1, Steve Zakula, President, Frank Pauley, Secretary-Treasurer, Joseph Frankovic, Job Representative, and Edmund D. Flood, Apprentice Co-Ordinator, Iron Workers District Council of Chicago & Vicinity, Leslie L. Myers, President, Robert Benson, Secretary and William Knapp, Vice-President; Paschen Contractors, Inc., a Delaware corporation; Peter Kiewit Sons Co., a Nebraska corporation; Bethlehem Steel Company, a Delaware corporation; and Dominic Tesauro, Regional Administrator, General Services Administration,

Defendants.

No. 63-C-1739.

COMPLAINT.

Now come Ronald L. Todd and Michael Cochran, by his parents and next friends, Ulysses Cochran and Patricia Cochran, and James Hill, all residents and citizens of the State of Illinois and of the United States of America by William R. Ming, Jr., and George N. Leighton, their attorneys, complaining of Joint Apprenticeship Committee of The Steel Workers of Chicago and International Association of Bridge, Structural and Ornamental Iron Workers Local Union No. 1, Sidney I. Cole, Chairman, Frank D. Reiland, Treasurer, A. Walter Becker, Thomas Cannon, James Eads, Joseph Frankovic, Stanford Jacobs, Edmund D. Flood, Apprentice Co-Ordinator; Iron Workers Bridge and Structural Union, Local No. 1, Steve Zakula, President, Frank Pauley, Secretary-Treasurer, Joseph Frankovic, Job Representative, and Edmund D. Flood, Apprentice Co-Ordinator; and Iron Workers District Council of Chicago & Vicinity, Leslie L. Myers, President, Robert Benson, Secretary and William Knapp, Vice-President, all of which organizations and individuals are sometimes collectively referred to hereinafter as the Union; Paschen Contractors, Inc., a Delaware corporation, and Peter Kiewit Sons' Co., a Nebraska corporation, hereinafter referred to as Contractors; Bethlehem Steel Company, a Delaware corporation, hereinafter referred to as Sub-Contractor; and Dominic Tesauro, Regional Administrator of the General Services Administration, hereinafter referred to as Administrator, hereby invoke the jurisdiction of this Court under the provisions of Title 28 U. S. C., Section 1331, in that the matter in controversy arises under the constitution and laws of the United States and the amount in controversy is in excess of $10,000.00.

For cause of action plaintiffs allege:

1. On or about October 26, 1962, by Contract No. GS-5PC-1178 Contractors undertook and agreed to construct a United States Courthouse and Federal Office Building in Chicago, Illinois. One of the provisions of that contract was as follows:

> "In connection with the performance of work under this contract, the Contractor agrees as follows:
>
> (a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Nondiscrimination clause.
>
> (b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.
>
> (c) The Contractor will send to each labor union or representative of workers with which he has a collective-bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under this Nondiscrimination clause, and shall post copies of the notice in conspicuous places available to the employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(e) The Contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Nondiscrimination clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedure authorized in Executive Order No. 10925 of March 6, 1961, and such other sanctions may be imposed and remedies invoked as provided in the said Executive order or by rule, regulations, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(g) The Contractor will include the provisions of the foregoing paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the

Contractor may request the United States to enter into such litigation to protect the interests of the United States."

Another provision was as follows:

"Apprentices will be permitted to work only under a bona fide apprenticeship program registered with a State Apprenticeship Council which is recognized by the Federal Committee on Apprenticeship, U. S. Department of Labor; or if no such recognized Council exists in a State, under a program registered with the Bureau of Apprenticeship, U. S. Department of Labor."

At all times material herein there was in full force and effect in the State of Illinois, a bona fide apprenticeship program for iron workers which had been approved by the United States Department of Labor on September 30, 1952.

2. Under the provisions of the said iron workers apprenticeship program the only requirements for apprentices are:

"A. Applicants for apprenticeship shall be not less than eighteen (18) years of age nor more than thirty (30) years of age, have a pronounced aptitude and interest in this craft and be physically able to perform the required work.

B. They shall be American citizens or make declarations to become same, or Canadian citizens within the Dominion of Canada.

C. They shall provide proof of their age.

D. They shall keep such records of their apprenticeship training as may be required by the Committee."

3. Plaintiffs Ronald L. Todd, Michael Cochran and James Hill are twenty-three (23), eighteen (18) and twenty-one (21) years of age respectively, and having been born

in the United States, plaintiffs are citizens of the United States. They belong to the ethnic group commonly designated as Negroes. Plaintiffs and each of the persons who constitute the class to which plaintiffs belong have a pronounced aptitude and interest in the iron workers craft and are physically able to perform the required work. Each plaintiff provided proof of his age to the Iron Workers' Joint Apprenticeship Committee on or about the 12th day of June, 1963, and has demonstrated that he satisfies the minimum standards of education and experience for apprenticeship under the said apprentice program. Said Committee refused to certify plaintiffs as apprentices solely because of their race and color. Plaintiffs and each of the persons of the class to which plaintiffs belong are persons who are either without financial means or of limited financial ability to bear the necessary costs and expenses of these proceedings. Defendants, on the other hand, are corporations, associations and individuals, who own and control vast sums of resources and assets.

4. In April 1963 plaintiffs and each of them sought employment by the Sub-Contractor as an apprentice iron worker. Notwithstanding the application and qualifications of plaintiffs and each of the persons similarly situated, Bethlehem Steel Company has failed and refused to employ these persons or any of them to work on the project covered by Contract No. GS-5PC-1178 solely because of their race and color. For the same reason the Sub-Contractor has refused to employ any person as a structural iron worker who is a Negro. Moreover, though Contractors well-know all of the facts alleged herein to be true, Contractors have failed and refused to take action, affirmative or otherwise to cause employment of plaintiffs.

5. The provisions of the contract quoted hereinbefore were entered into for the benefit of plaintiffs and persons similarly situated. Plaintiffs are members of a class of

persons who, being residents and citizens of the United States, commonly designated as Negroes, are and have been for many years objects and victims of discrimination in employment and exclusion from certain classes and crafts of employment of which the craft of structural iron workers is one. The size of this class is so great and the number of persons so numerous that it would not be practicable for all such persons to join in this action. Plaintiffs therefore bring this action on their own individual behalf and on behalf of that class.

6. All of the defendants herein well know the truth of the allegations contained herein. Notwithstanding the aforesaid, none of the defendants has secured enforcement of the rights of the plaintiffs or the class they represent under the terms of Contract No. GS-5PC-1178. The plaintiffs have no remedy at law which would be adequate.

7. On or about the 6th day of March, 1961, the President of the United States issued Executive Order No. 10925, which provides, in part:

> "WHEREAS discrimination because of race, creed, color, or national origin is contrary to the Constitutional principles and policies of the United States; and
>
> WHEREAS it is the plain and positive obligation of the United States Government to promote and ensure equal opportunity for all qualified persons, without regard to race, creed, color, or national origin, employed or seeking employment with the Federal Government and on government contracts; and
>
> WHEREAS it is the policy of the executive branch of the Government to encourage by positive measures equal opportunity for all qualified persons within the Government; and
>
> WHEREAS it is in the general interest and welfare of the United States to promote its economy, security, and national defense through the most efficient and effective utilization of all available manpower; . . ."

WHEREFORE, the plaintiffs respectfully pray this Court to enjoin the defendants and each of them from proceeding with the performance of Contract No. GS-5PC-1178 unless and until plaintiffs and each of them is duly and regularly employed as an iron workers apprentice or in the alternative that this Court enjoin and restrain the defendants and each of them from making or receiving any payments on account of such contract unless and until plaintiffs and each of them is duly and regularly employed as an iron workers apprentice.

RONALD L. TODD and MICHAEL COCHRAN, by his parents and next friends, Ulysses Cochran and Patricia Cochran, and JAMES HILL,

Plaintiffs,

By.....

WILLIAM R. MING, JR.,
GEORGE N. LEIGHTON,
Of Counsel.